

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition  
to Revoke Probation Against:

GARY LYNN MANNING  
1389 Carvin Avenue  
Rowland Heights, CA 91748

CDC# F-58381, B3-162L  
Chuckawalla Valley State Prison  
P.O. Box 2349  
Blythe, CA 92226

Registered Nurse License No. 301677  
Public Health Nurse Certificate No. 29842

Respondent

Case No. 2000-237

OAH No. L-2004070313

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 14, 2007.

IT IS SO ORDERED November 14, 2007



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 JENNIFER S. CADY  
Supervising Deputy Attorney General  
3 DESIREE A. TULLENERS, State Bar No. 157464  
Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to  
13 Revoke Probation Against:

14 **GARY LYNN MANNING**  
Chukawala Valley State Prison  
15 P.O. Box 2349  
Blythe, CA 92226

16 3895 Kenwood Avenue  
17 San Bernardino, CA 92404

18 Registered Nurse License No. 301677  
19 Public Health Nurse Certificate No. 29842

20 Respondent.

Case No. 2000-237

OAH No. L-2004090339

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

21 *IT IS HEREBY STIPULATED AND AGREED* by and between the parties to the  
22 above-entitled proceedings that the following matters are true:

**PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
24 the Board of Registered Nursing. Ms. Terry brought this action solely in her official capacity and  
25 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of  
26 California, by Desiree A. Tulleners, Deputy Attorney General.

27 2. Respondent Gary Manning (Respondent) is currently representing himself  
28 in pro per in this proceeding. He was formerly represented by Attorney Robert Hahn during the

negotiation of the terms of this settlement.

3. On or about March 31, 1979, the Board of Registered Nursing issued Registered Nurse License No. 301677 to Gary Lynn Manning (Respondent). The license is currently under interim suspension order and will expire on October 31, 2008, unless renewed.

4. On or about April 9, 1980, the Board of Registered Nursing issued Public Health Nurse Certificate No. 29842 to Gary Lynn Manning (Respondent). The certificate is currently under interim suspension order, and will expire on October 31, 2008, unless renewed.

## JURISDICTION

5. An Accusation in a prior case No. 2000-237 was filed on June 15, 2000. As a result of that Accusation, following a hearing, on the effective date of May 29, 2002, Respondent's Registered Nurse License and Public Health Nurse Certificate were revoked, stayed, and placed on probation for a period of five (5) years under certain terms and conditions. Respondent committed the acts alleged in the now pending Accusation No. 2000-237 on or about October 17, 2003, within that 5 year time period while on probation. On August 11, 2004, due to the facts underlying the now pending Accusation, Respondent's Registered Nurse License and Public Health Nurse Certificate were suspended.

6. On August 25, 2004, Accusation and Petition to Revoke Probation No. 2000-237 ("Accusation") was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 25, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2000-237 is attached as Exhibit A, and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2000-237. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the

1 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
2 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
3 the right to present evidence and to testify on his own behalf; the right to the issuance of  
4 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
5 reconsideration and court review of an adverse decision; and all other rights accorded by the  
6 California Administrative Procedure Act and other applicable laws.

7 9. Respondent voluntarily, knowingly, and intelligently waives and gives up  
8 each and every right set forth above.

9 **CULPABILITY**

10 10. Respondent admits that on October 11, 2006, he was convicted of one  
11 count of violating Penal Code section 243.4(b) (sexual battery on medically institutionalized  
12 person), a felony, in People of the State of California v. Gary Lynn Manning in San Bernardino  
13 County Superior Court, Case No. FSB043843, which constitutes grounds for the Board of  
14 Registered Nursing to subject his license to discipline.

15 **FACTORS IN AGGRAVATION**

16 11. This is Respondent's second felony conviction involving a sexual offense  
17 against another person. In a prior case, People of the State of California v. Gary Manning, in Los  
18 Angeles Superior Court, Case No. BA117306, Respondent was convicted on March 26, 1996, on  
19 his plea of nolo contendere to one count of violating Penal Code section 243(c) (battery against a  
20 nurse) a felony.

21 12. Respondent agrees that his Registered Nurse License and Public Health  
22 Nurse Certificate are subject to discipline, and he agrees to be bound by the Board's imposition  
23 of discipline as set forth in the Disciplinary Order below.

24 **CONTINGENCY**

25 13. The parties understand and agree that facsimile copies of this Stipulated  
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
27 force and effect as the originals.

28 ///

1                   14.     In consideration of the foregoing admissions and stipulations, the parties  
2 agree that the Board may, without further notice or formal proceeding, issue and enter the  
3 following Disciplinary Order:

4                                   **DISCIPLINARY ORDER**

5                   *IT IS HEREBY ORDERED* that Respondent Gary Lynn Manning's Registered  
6 Nurse License No. 301677 and Public Health Nurse Certificate No. 29842 are revoked.

7                   1.     Respondent shall not apply for licensure or petition for reinstatement for a  
8 period of five (5) years following the effective date of the Board's Decision and Order.

9                   2.     Respondent understands and agrees that if he ever applies for licensure or  
10 petitions for reinstatement in the State of California, the Board shall treat it as a new application  
11 for licensure. Respondent must comply with all the laws, regulations and procedures in effect at  
12 the time the application or petition is filed, and all the charges and allegations contained in  
13 Accusation No. 2000-237 shall be deemed to be correct, true and admitted by Respondent when  
14 the Board determines whether to grant or deny the application or petition.

15                   3.     Prior to the filing of any petition for reinstatement, application for re-  
16 licensure and/or re-certification, and/or application for new and/or additional licenses or  
17 certificates regulated by this Board, Respondent must pay the Board its costs incurred in the  
18 investigation and enforcement of the Interim Suspension Order and the Accusation and Petition  
19 to Revoke Probation Case No. 2000-237 in the full amount of forty-four thousand five hundred  
20 dollars and fifty cents (\$44,500.50), pursuant to Business and Professions Code section 125.3.

21                   4.     Respondent shall lose all rights and privileges as a registered nurse and as  
22 a public health nurse in the State of California as of the effective date of the Board's Decision  
23 and Order.

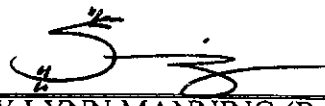
24                   5.     Respondent shall cause to be delivered to the Board both his wall  
25 certificates and pocket licenses for each license on or before the effective date of the Decision  
26 and Order.

27                   6.     This stipulation constitutes a record of discipline and shall become part of  
28 Respondent's license history with the Board.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
3 have fully discussed it with my former attorney, Robert F. Hahn. I understand the stipulation and  
4 the effect it will have on my Registered Nurse License No. 301677 and Public Health Nurse  
5 Certificate No. 29842. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,  
6 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

7 DATED: 07-30-07

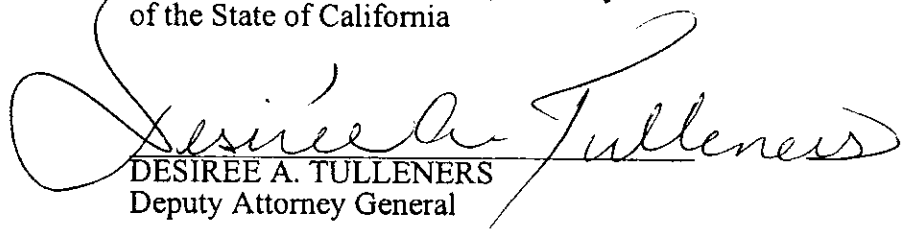
8   
9  
10 GARY LYNN MANNING (Respondent)  
Respondent

11  
12  
13  
14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
16 submitted for consideration by the Board of Registered Nursing.

17 DATED: August 9, 2007

18 EDMUND G. BROWN JR., Attorney General  
19 of the State of California

20   
21 DESIREE A. TULNERS  
22 Deputy Attorney General

23 Attorneys for Complainant  
24  
25  
26  
27

1 BILL LOCKYER, Attorney General  
of the State of California  
2 ERLINDA G. SHRENGER, State Bar No. 155904  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-5794  
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

11 GARY LYNN MANNING  
12 3895 Kenwood Avenue  
San Bernardino, CA 92404

13 Registered Nurse License No. 301677  
14 Public Health Nurse Certificate No. 29842

15 Respondent.

Case No. 2000-237

OAH No. L-2004070313

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On or about March 31, 1979, the Board of Registered Nursing ("Board")  
23 issued Registered Nurse License No. 301677 to Gary Lynn Manning ("Respondent"). The  
24 Registered Nurse License will expire on October 31, 2004, unless renewed. The Board also  
25 issued Public Health Nurse Certificate No. 29842 to Respondent on or about April 9, 1980. The  
26 Certificate will expire on October 31, 2004, unless renewed.

27 3. In a disciplinary action entitled "In the Matter of the Accusation Against  
28 Gary Lynn Manning," Case No. 2000-237, OAH No. L-2001010552, the Board issued a

1 Decision, effective May 29, 2002, in which Respondent's Registered Nurse License was revoked.  
2 However, the revocation was stayed and Respondent's license was placed on probation for a  
3 period of five (5) years pursuant to certain terms and conditions. A copy of the May 29, 2002  
4 Decision is attached hereto as Exhibit A and incorporated by reference.

#### 5 JURISDICTION

6 4. This Accusation and Petition to Revoke Probation is brought before the  
7 Board under the authority of the following sections of the Business and Professions Code  
8 ("Code").

9 5. Section 2750 of the Code provides, in pertinent part, that the Board may  
10 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
11 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

12 6. Section 2761 of the Code provides, in pertinent part, that the Board may  
13 take disciplinary action against a certified or licensed nurse or deny an application for a  
14 certificate or license for any of the following:

15 (a) Unprofessional conduct.

16 . . . .

17 (d) Violating or attempting to violate, directly or indirectly, or assisting in or  
18 abetting the violating of, or conspiring to violate any provision or term of this chapter or  
19 regulations adopted pursuant to it.

20 7. Section 726 of the Code states, in part: "The commission of any act of  
21 sexual abuse, misconduct, or relations with a patient . . . constitutes unprofessional conduct and  
22 grounds for disciplinary action for any person licensed under this division, under any initiative  
23 act referred to in this division and under Chapter 17 (commencing with Section 9000) of  
24 Division 3."

25 8. Section 2764 of the Code provides, in pertinent part, that the expiration of  
26 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
27 against the licensee or to render a decision imposing discipline on the license. Under section  
28 2811(b) of the Code, the Board may renew an expired license at any time within eight years after



1 the expiration.

2           9.       Section 125.3 of the Code provides, in pertinent part, that the Board may  
3 request the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

## ACCUSATION

FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct)**

9                                10.        Respondent's license is subject to discipline pursuant to Sections 726 and  
10       2761, subdivisions (a) and (d), of the Code, in that he engaged in unprofessional conduct, as  
11       follows:

12                   A.       On or about October 17, 2003, patient K.E., a female, was admitted to  
13 Arrowhead Regional Medical Center in Colton, California for knee surgery. Respondent was on  
14 duty as a student nurse anesthesiologist during patient K.E.'s surgery.

15 B. Patient K.E. had "conscious sedation" for her knee surgery. Patient K.E.  
16 reported that, during the surgery, on at least 3 occasions, Respondent massaged her neck and then  
17 placed his hands under her gown and fondled her breasts, and whispered in her ear "does this feel  
18 good?"

C. Patient K.E. received "conscious sedation" from Respondent. The clinical characteristics of a patient under conscious sedation include the following: (1) maintenance of protective reflexes (e.g., ability to control secretions, avoiding aspiration, and breathe without assistance); (2) independent and continuous maintenance of a patient airway; (3) patient retains ability to respond appropriately to verbal commands and physical stimulation; (4) easy arousal; (5) patient exhibits minimally depressed level of consciousness; and (6) slightly slurred speech.

25 D. After surgery, patient K.E. was taken to the recovery room. Respondent  
26 came to see patient K.E. in the recovery room. While on the left side of her bed, Respondent  
27 took patient K.E.'s hand and placed it through the bed rails, telling her he had to check her I.V.  
28 While doing so, Respondent placed patient K.E.'s hand on his penis. Patient K.E. reported that

1 Respondent held her hand on his penis while applying some pressure. Respondent then walked  
2 around the bed and took patient K.E.'s right hand and placed her arm through the bed rails,  
3 telling her he was checking the blood pressure cuff. While doing this, Respondent applied  
4 pressure with patient K.E.'s right hand against his penis before finally releasing her hands and  
5 walking out of the recovery room.

#### 6 OTHER MATTERS

7 11. To determine the degree of penalty to be imposed on Respondent, if any,  
8 Complainant makes the following allegations:

9 12. At the time of the incidents alleged in Paragraph 10, above, Respondent's  
10 registered nurse license was on probation with the Board, pursuant to the Board's Decision  
11 effective May 29, 2002, a copy of which is attached hereto as Exhibit A.

12 13. The incidents alleged in Paragraph 10, above, are similar to Respondent's  
13 misconduct which was the basis of the Board's May 29, 2002 Decision. On or about March 26,  
14 1996, Respondent was convicted in the Los Angeles Superior Court, Case No. BA117306,  
15 entitled People v. Gary Manning, on his plea of nolo contendere to one count of violating Penal  
16 Code section 243(c) (battery against a nurse, a felony). The circumstances of the conviction were  
17 that on June 7, 1995, at approximately midnight, Respondent committed battery against a female  
18 nurse, E.K., who was Respondent's co-worker at an ambulance company. Respondent awakened  
19 E.K., who had been sleeping in the nurse's sleeping quarters at the ambulance station, and  
20 unlawfully fondled her breasts and vagina, and forced her to rub his penis with her hand.

#### 21 PETITION TO REVOKE PROBATION

22 14. Respondent's probation includes the following terms and conditions:

23 A. Condition No. 1 (Obey All Laws) states, in part:

24 "Respondent shall obey all federal, state and local laws. A full and detailed  
25 account of any and all violations of law shall be reported by the respondent to the Board in  
26 writing within seventy-two (72) hours of occurrence."

27 B. Condition No. 12 (Violation of Probation) states:

28 "If a respondent violates the conditions of his probation, the Board after giving the

respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

**“If during the period of probation, an accusation or petition to revoke probation has been filed against respondent’s license or the Attorney General’s Office has been requested to prepare an accusation or petition to revoke probation against the respondent’s license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent’s license will be fully restored.”**

## GRUNDS FOR REVOKING PROBATION

15. Respondent's probation is subject to revocation in that Respondent failed to comply with Condition No. 1 of probation, in the following respects:

A. Under Condition No. 1, Respondent is required to obey all federal, state and local laws. As a result of Respondent's conduct alleged in Paragraph 10, above, a Felony Complaint was filed on or about April 12, 2004 in San Bernardino County Superior Court, Case No. FSB043843, entitled People v. Gary Manning, which charges Respondent with one count of violating Penal Code section 243.4(b) (sexual battery on medically institutionalized person). A warrant for Respondent's arrest was issued by the Court on or about April 12, 2004.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2000-237 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 301677, issued to Gary Lynn Manning;

2. Revoking or suspending Registered Nurse License No. 301677, issued to Gary Lynn Manning;

3. Revoking or suspending Public Health Nurse Certificate No. 29842, issued to Gary Lynn Manning;

///

4. Ordering Gary Lynn Manning to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Taking such other and further action as deemed necessary and proper.

**DATED: August 25, 2004**

Ruth Ann Terry by E. Smeger  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

LA2004600792  
60041893.wpd  
(08/25/04)

**Exhibit A**  
**Decision and Order**  
**Case No. 2000-237**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GARY LYNN MANNING  
5541 Crosscreek Lane 32105  
Fort Worth, TX 76109

Case No. 2000-237

OAH No. L2001010552

Registered Nurse License No. 301677,

Public Health Nurse Certificate No. 29842,

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on May 29, 2002.

IT IS SO ORDERED April 29, 2002.



SANDRA ERICKSON, CRNA  
PRESIDENT  
BOARD OF REGISTERED NURSING  
Department of Consumer Affairs  
State of California

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**GARY LYNN MANNING  
5541 Crosscreek Lane 32105  
Fort Worth, TX 76109**

**Case No. 2000-237**

**OAH No. L2001010552**

**Registered Nurse License No. 301677,**

**Public Health Nurse Certificate No. 29842,**

**Respondent.**

**PROPOSED DECISION**

Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, State of California, heard this matter on November 1, 2001, in Los Angeles, California.

Erlinda G. Shrenger, Deputy Attorney General, represented the Board of Registered Nursing.

Robert H. Beswick, Attorney at Law, represented respondent who was present at the hearing.

On February 1, 2001, the Notice of Hearing was issued setting the matter for August 23, 2001. On August 6, 2001, Mr. Beswick requested a continuance of the scheduled hearing date on the grounds that he had a calendar conflict and because discovery had not been completed. Mr. Beswick and Ms. Shrenger agreed that the matter could be reset on one of three specified dates, one of which was November 1, 2001. On August 8, 2001, Mr. Beswick's request for a continuance was granted, and both counsel were notified by the Office of Administrative Hearings that the matter reset on November 1, 2001.

On September 13, 2001, Mr. Beswick requested a continuance of the scheduled November 1, 2001, hearing date on the grounds that he would be out of town on that date and that he would be handling other unspecified cases. He wrote that he would be out of the state most of the balance of 2001, and requested that the matter be rescheduled in 2002. On

September 25, 2001, Ms. Shrenger filed an Opposition to the Request for Continuance, noting that Mr. Beswick agreed to the scheduled November 1, 2001, date when his prior continuance request was granted and that he should not have accepted other engagements which conflicted with that date. On October 1, 2001, Mr. Beswick's request for a continuance was denied because the scheduled date had been selected with his agreement, and he had been notified of that date on August 9, 2001.

On October 24, 2001, Mr. Beswick made a third request for a continuance on the grounds of the recent events in the nation and that a seven-day notice was insufficient to obtain out-of-state witnesses.<sup>1</sup> On October 29, 2001, Ms. Shrenger filed an opposition to Mr. Beswick's third request for a continuance. She noted that he had had at least three months to make travel arrangements for witnesses, that at least three of his character witnesses resided in Los Angeles County, and that any further continuance would be inconsistent with the public interest and the safety of respondent's nursing colleagues. On October 29, 2001, Mr. Beswick responded that his three requests for a continuance were grounded on viable facts and circumstances and not frivolous or unsupported. He reiterated his request for a continuance. Later that day Mr. Beswick's request for a continuance was denied and the parties were notified of that order by telephone.

Documentary and testimonial evidence was received on November 1, 2001. The record remained open for receipt of a certified copy of Exhibit 5 and for receipt of closing briefs to be filed simultaneously on January 11, 2002. Respondent's Closing Brief was received on January 10, 2002, as Exhibit B. On the same date at 4:09 p.m. Mr. Beswick faxed a letter [Exhibit C] in which he objected to Ms. Shrenger having an extension<sup>2</sup> of time to file her closing brief, and requested the opportunity to file a reply to her brief. The undersigned Administrative Law Judge directed the calendar clerk to advise Mr. Beswick that he could file a responsive or supplemental brief. Later that day, Ms. Shrenger advised the Los Angeles Office of Administrative Hearings that she could file her brief by the due date and would not utilize an extension. The Board's Closing Statement was received on January 11, 2002, as Exhibit 6. The record remained open for receipt of the additional brief for respondent. On February 15, 2002, Mr. Beswick's office confirmed that no further brief

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<sup>1</sup> Mr. Beswick had served Ms. Shrenger with Notices of Intent to Introduce Declarations of Witnesses [Government Code section 11524] on October 18 and 24, 2001, more than a month after the events of September 11, 2001. On October 24, 2001, Ms. Shrenger filed her request to cross-examine three of the five witnesses whose declarations were proposed.

<sup>2</sup> At hearing counsel were permitted to determine if they wanted to file briefs, if they would be simultaneous or responsive, and the briefing schedule they wanted. Counsel were advised that if they needed an extension of a week or less they need not contact the undersigned, but need only advise opposing counsel of the use of that short extension. Neither counsel objected to that procedure, which was designed to prevent problems of contacting an administrative law judge conducting hearings away from her home office. Counsel were further advised that a longer extension would require formal permission.

Mr. Beswick's faxed letter of January 10, 2002, stated that one day before the briefs were due he received a call from Ms. Shrenger advising that she was using the one-week extension. He wrote: "Please be advised that we object to this extension on two grounds: she has requested at the eleventh hour an extension within which to file her brief only after reading our brief. Effectively her brief will be a response to ours and not a closing brief as ordered by the court. As a result we request that she not be allowed the extension, and that her brief be a 'closing brief' and not an opposition to ours. We are also requesting that we be allowed to file a reply to (sic) should we deem it necessary."



would be filed. On that date Mr. Beswick again faxed the Closing Brief which had been received as Exhibit B. The second faxed document was marked as Exhibit D. The record was closed and the matter was submitted.

### FACTUAL FINDINGS

1. Ruth Ann Terry, R.N., M.P.H., is the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (hereinafter "the Board"), and made and filed the Accusation in her official capacity.

2. On March 31, 1979, the Board issued registered nurse License No. 301677 to Gary Lynn Manning (hereinafter "respondent"). The license was in full force and effect at all times relevant to the Accusation and will expire on October 31, 2002, unless renewed. On April 9, 1980, the Board issued Public Health Nurse Certificate No. 29842 to respondent. The certificate will expire on October 31, 2002, unless renewed.

Respondent obtained his BS in 1979 at California State University at Los Angeles and his master's degree at the same institution in 1983. He holds a specialized certificate in critical care nursing, and is a member of the Emergency Nurses Association and the National Flight Nurse Association. He has worked at several hospitals in Oregon, California, and Texas in various positions including charge nurse, unit supervisor, multi-unit supervisor, and Assistant Director of Nursing.

3. Pursuant to Business and Professions Code section 2750 the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

4. Business and Professions Code section 2761 provides that:

"The board may take disciplinary action against a certified or licensed nurse or an applicant for a certificate for any of the following:

"(a) ...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

5. Pursuant to Business and Professions Code section 2764 the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Business and Professions Code section 490 provides that:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has lapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

7. Pursuant to Business and Professions Code section 125.3 the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Nursing Practice Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

8. On March 26, 1996, respondent was convicted in the Los Angeles Superior Court in Case No. BA117306 captioned "The People of the State of California v. Gary Manning," on his plea of nolo contendere of violation of Penal Code section 243(c) [BATTERY AGAINST A NURSE], a felony. Respondent was placed on three years probation on various terms including that he complete 200 hours of community service, to stay away from the victim, and to cooperate with the probation office for psychiatric or psychological counseling.

The circumstances of the conviction were that on June 7, 1995, respondent committed battery against a female nurse E.K., a co-worker at Goodhew Ambulance.

9. The crime of which respondent was convicted is substantially related to the qualifications, functions and duties of a registered nurse within the meaning of Title 16, California Code of Regulations ("CCR") 1444(a).

10. At the time of the offense respondent was employed<sup>3</sup> as a nurse in the Emergency Room of Huntington East Valley Hospital in Glendora, and through an agency at other hospitals and Goodhew Ambulance. At the Hollywood station of Goodhew Ambulance respondent and nurse E.K. handled critical care ground and air transport. They had separate sleeping quarters, which respondent described as like those in a fire station, available during shifts.

11. Respondent testified that E.K. alleged that he came into her room at the Hollywood station and forced her to touch his erect penis and fondled her breasts and vagina.

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<sup>3</sup> While respondent was living and working in Southern California his wife and family remained in Oregon.

12. Respondent testified that the rape charges originally filed<sup>4</sup> were reduced to a misdemeanor battery. He further claimed he pled nolo contendere to that misdemeanor on the advice of his attorney, and the plea meant he was not contesting the whole procedure but was not admitting guilt.

In fact respondent was convicted of a felony. On cross-examination he admitted that the judge advised him on the record that he was pleading to a felony, and the deputy district attorney stated twice that he was pleading to a felony.

13. Respondent was licensed in California at the time of his March 26, 1996, conviction. He did not report his conviction to the Board, and testified that he did not know if he was required to do so. Respondent had no contact from the Board regarding his conviction until late 1999.

14. Respondent completed the 200 hours of community service ordered by the court. He was permitted to complete some of the required community service taking blood pressures and performing glucose screenings at a Health Fair in Oregon.

15. Respondent obtained the ordered counseling from Dr. Wendy Saxon, a forensic psychologist whom respondent's attorney had used in prior criminal cases. Respondent met with Dr. Saxon four times over a four to five week period. He testified that Dr. Saxon pointed out a number of things about his personality and how he approached people. He opined that those four sessions changed his nursing practices, including that for female patients he always has a woman staff member or patient's relative present. He testified that he has matured and "is more aware of how circumstances could be interpreted."

16. Respondent continued working at Huntington East Valley Hospital until 1999, when he left to attend Texas Wesleyan University. He is a full-time student and scheduled to graduate as a nurse anesthetist in December 2003. Respondent is presently employed by CompHealth as a travelling nurse and at the Osteopathic Hospital Medical Center. He testified that there have been no complaints about his care.

17. Kenneth Langston, R.N., has known respondent since approximately 1979 as a co-worker and friend. As a licensed vocational nurse Mr. Langston worked with respondent at El Monte Community Hospital for four years, sometimes on the same shift. They worked together later at Santa Marta Hospital for a total of five years, and last worked together in 1991 or 1992. Although respondent has lived in Texas since 1999 he and Mr. Langston remain friends and speak monthly by telephone.

Mr. Langston opined that respondent is a nurse of excellent qualities and skills and that his ethics are "beyond reproach." He testified that the medical community considers respondent to be honest, sincere, and knowledgeable and that other nurses used him as a

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<sup>4</sup> The original charges were two felony counts of sexual penetration with a foreign object in violation of Penal Code section 289(A) and one felony count of sexual battery by restraint in violation of Penal Code section 243.4(A).

resource. Mr. Langston found respondent's arrest "unbelievable" because he had known respondent so many years and viewed his behavior with female coworkers and patients to be professional.

18. On June 15, 1999, in the Los Angeles Superior Court respondent's petition for a dismissal pursuant to Penal Code section 1203.4 was granted.

19. No direct expert evidence regarding respondent's psychiatric status was presented. A report by Dr. Saxon, who saw respondent four times, was received as hearsay. Dr. Saxon noted respondent's assertion that "the incident in question was a misunderstanding between two adults who were engaged in some intimate interplay that he did not feel constituted an act against the woman's will." That document and the hearsay statements of Richard Sheppard, R.N., Bradley Harville, R.N., Stephen Acosta, M.D., Stanley Shourup, R.N., and John McFarland, LVN, were considered pursuant to Government Code section 11513.

20. Respondent's argument that his 1996 conviction "bears no relationship with (sic) his qualifications, functions and duties as a registered nurse" was not persuasive.

21. Respondent's Closing Brief asserts facts<sup>5</sup> and purports to summarize evidence that was not presented at hearing. The false assertions of "facts" and descriptions of matters never even addressed by the evidence at hearing are too numerous to specify in the Proposed Decision. These claimed "facts" are, at best, confabulations.

22. Respondent asserts that the subject proceeding is barred by laches. To establish this defense, respondent must establish both an unreasonable delay in prosecution and that he was prejudiced by that delay. Fahmy v. Medical Board of California 38 Cal.App.4th 810, 815; Gates v. Department of Motor Vehicles (1979) 94 Cal.App.3d 921; Brown v. State Personnel Board (1985) 166 Cal.App.3d 1151.

Respondent asserts that the Board's delay prevented him from presenting evidence of the victim's "unusual behavior" and "nature and conduct" and "highly suspect nature." Such evidence would not have been admissible in that no collateral attack upon a conviction can be entertained in the subject administrative proceeding. Goodhew Ambulance no longer exists, but respondent presented statements and testimony from individuals who knew him at the time of the incident. Respondent did not establish that he was prejudiced by the Board's delay in filing the subject Accusation. The evidence established that respondent was aided by the passage of time which permitted him to establish a period of rehabilitation, and to obtain a dismissal pursuant to Penal Code section 1203.4.

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<sup>5</sup> Respondent's Closing Brief also states that the administrative hearing was conducted by Administrative Law Judge Janis Rovner. The hearing was conducted by the undersigned Administrative Law Judge, M. Amanda Behr.

Respondent's argument that he detrimentally relied upon the Board's inaction was not established by evidence in the record. Many of the related "facts" asserted in Respondent's Closing brief were not addressed, much less established, by the evidence.

23. The Board has incurred costs of the investigation and enforcement of the case totaling \$5,662.75. Those costs are found to be reasonable.

### LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professions Code sections 2761(f) and 490. Respondent has demonstrated sufficient rehabilitation that the public interest would be protected if he practiced under the strict terms set forth below.

2. Cause for ordering respondent to pay the Board's costs of the investigation and enforcement of \$5,662.75 was established.

### ORDER

The license of respondent Gary Lynn Manning is revoked; however, the revocation is stayed and respondent is placed on probation for five years on the terms and conditions set forth below. Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of himself within 45 days of the effective date of the final decision.

(2) COMPLY WITH PROBATION PROGRAM - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY OR PRACTICE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS -

Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

## PROVIDE DECISION

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

(10) COMPLETE A NURSING COURSE(S) Respondent, at his own expense, shall enroll and successfully complete an ethics course relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$5,662.75. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(12) VIOLATION OF PROBATION -- If a respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

(13) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

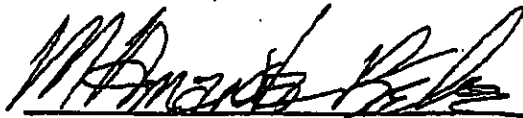
If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued



by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to resume practice.

(18) THERAPY OR COUNSELING PROGRAM - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Submission of written progress reports from the counselor will be required at various intervals to be determined by the Probation Monitor.

Dated: March 8, 2002



M. AMANDA BEHE

Administrative Law Judge

Office of Administrative Hearings

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5 Attorneys for Complainant  
6  
7

8 BEFORE THE  
BOARD OF REGISTERED NURSING  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Accusation  
11 Against:

NO. 2000-237

ACCUSATION

12 GARY LYNN MANNING  
5028 Sunflower Avenue  
13 Covina, California 91724  
Registered Nurse License  
14 No. 301677  
Public Health Nurse Certificate  
15 No. 29842

16 Respondent.  
17

18 Ruth Ann Terry, R.N., M.P.H., for causes for discipline, alleges:

19 1. Complainant Ruth Ann Terry, R.N., M.P.H., makes and files this  
20 Accusation in her official capacity as Executive Officer, Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On March 31, 1979, the Board of Registered Nursing issued  
23 Registered Nurse License No. 301677 to Gary Lynn Manning (respondent herein). The  
24 license will expire on October 31, 2000, unless renewed.

25 3. On April 9, 1980, the Board of Registered Nursing issued Public  
26 Health Nurse Certificate No. 29842 to Gary Lynn Manning (respondent herein). The  
27 certificate will expire on October 31, 2000, unless renewed.

1                   4. Under Business and Professions Code section 2750, the Board of  
2 Registered Nursing may discipline any licensee, including a licensee holding a  
3 temporary or an inactive license, for any reason provided in Article 3 of the Nursing  
4 Practice Act.

5                   5. Under Business and Professions Code section 2764, the expiration of a  
6 license shall not deprive the board of jurisdiction to proceed with a disciplinary  
7 proceeding against the license or to render a decision imposing discipline on the  
8 license.

9                   6. Under Business and Professions Code section 490, the Board may  
10 suspend or revoke a license on the ground that the licensee has been convicted of a  
11 crime, if the crime is substantially related to the qualifications, functions, or duties of a  
12 registered nurse.

13                  7. Under Business and Professions Code section 125.3, the Board may  
14 request the administrative law judge to direct a licentiate found to have committed a  
15 violation or violations of the licensing act to pay a sum not to exceed the reasonable  
16 costs of the investigation and enforcement of the case.

17                  8. Respondent has subjected his license to discipline under Business and  
18 Professions Code section 2761(f) in that on or about March 26, 1996, he was convicted  
19 by the court on his plea of nolo contendere to a violation of Penal Code section 243(c)  
20 (battery against a nurse), a felony, in Los Angeles County Superior Court, case number  
21 BA 117306, entitled People v. Gary Manning. The circumstances of the crime are that  
22 on or about June 7, 1995, in Los Angeles County, respondent committed battery against  
23 a female nurse. Such a crime is substantially related to the qualifications, functions or  
24 duties of a registered nurse, within the meaning of section 1444 of Title 16, California  
25 Code of Regulations.

26                  9. Respondent has subjected his license to discipline under Business and  
27 Professions Code section 490 in that he was convicted of a crime substantially related to

1 the qualifications, functions, or duties of a registered nurse, as alleged in paragraph 8  
2 above.

3 WHEREFORE, complainant prays that a hearing be held and that the  
4 Board of Registered Nursing make its order:


5 1. Revoking or suspending Registered Nurse License No. 301677, issued  
6 to Gary Lynn Manning.

7 2. Revoking or suspending Public Health Nurse Certificate No. 29842,  
8 issued to Gary Lynn Manning.

9 3. Ordering Gary Lynn Manning to pay to the Board its costs in  
10 investigating and enforcing the case according to proof at the hearing, pursuant to  
11 Business and Professions Code section 125.3.

12 4. Taking such other and further action as may be deemed proper and  
13 appropriate.

14 DATED: 6/15/00

15  
16  
17   
18 RUTH ANN TERRY, R.N., M.P.H.  
19 Executive Officer  
20 Board of Registered Nursing  
21 Department of Consumer Affairs  
22 State of California

23  
24  
25 Complainant

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27 LA2000AD0023  
dk (4-18-00)